

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABBOTT LABORATORIES and ABBOTT)	
CARDIOVASCULAR SYSTEMS, INC.,)	
)	
Plaintiffs,)	
)	C.A. No. 06-613-SLR
v.)	
)	
JOHNSON and JOHNSON, INC., and CORDIS)	
CORPORATION,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO AMEND THEIR COMBINED
ANSWERING BRIEF IN OPPOSITION TO PLAINTIFFS' MOTIONS (D.I. 58)**

Defendants Johnson & Johnson and Cordis Corporation (collectively "Defendants") hereby respectfully move to amend their combined answering brief (D.I. 58) (the "Answering Brief") in opposition, *inter alia*, to Plaintiffs' motions to file a supplemental complaint (D.I. 43) and to enjoin prosecution of litigation in New Jersey (D.I. 47) (collectively "Plaintiffs' Motions"). Specifically, there are a document and accompanying declaration which already are part of the record in this case in connection with briefing on another pending motion, and which are relevant to Plaintiffs' Motions, but which were received too late to be included in Defendants' Answering Brief. By this motion, Defendants simply seek leave to amend their Answering Brief to briefly refer to that document and accompanying declaration.

Defendants' Answering Brief was filed on June 13, 2007, along with a Declaration of Gale Raffield (Answering Brief at Ex. 1) (the "Raffield Declaration") and a letter from the Clerk of the Court of the United States District Court for the District of New Jersey (*see id.* at Ex. B). On the same day that Defendants filed their Answering Brief and exhibits, the Clerk of the Court

in New Jersey sent another similar letter to Cordis' New Jersey counsel ("the June 13, 2007 Letter"). The June 13, 2007 Letter was not received in time to be included as part of the Raffield Declaration or to be appended to Defendants' Answering Brief, but the next day it was included as an exhibit to Defendants' June 14, 2007 reply brief in support of their motion to dismiss in this case (D.I. 59), along with a Supplemental Declaration of Gale Raffield (the "Supplemental Raffield Declaration") (D.I. 59 at Ex. 1). The June 13, 2007 Letter is Exhibit A to the Supplemental Raffield Declaration.

Defendants respectfully request leave to amend their Answering Brief to include a similar brief reference to the Supplemental Raffield Declaration and the June 13, 2007 Letter, which already are before the Court in this case as part of the briefing on Defendants' pending motion to dismiss. Specifically, in their Answering Brief at page 9, line 6, immediately following the parenthetical, Defendants wish to add a footnote, the text of which is as follows:

"Similarly, the Notice of Electronic Filing generated after Cordis filed its New Jersey action on the '473 patent on June 12, 2007 at 12:03 a.m. and the email noting the clerk's office's initial docket entry for that case both incorrectly refer to June 11, 2007. (*See id.* Exs. F & G, respectively.) However, the New Jersey court's clerk's office has confirmed that its records reflect that Cordis' complaint was filed at 12:03 a.m. on June 12, 2007. (*See D.I. 59 Ex. 1 Raffield Suppl. Decl. ¶ 4 & Ex. A.*)"

Defendants sought Plaintiffs' consent to this request on June 14, 2007. On June 20, 2007, Plaintiffs' counsel responded that they would so stipulate only if Defendants would meet certain conditions – conditions which Defendants consider to be unreasonable. Defendants therefore promptly filed this motion.

WHEREFORE, Defendants respectfully request that the Court grant their motion to amend their Answering Brief as set forth above and in the accompanying proposed order.

ASHBY & GEDDES

/s/ *Steven J. Balick*

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CORPORATION,)
Defendants.)

ORDER

At Wilmington this _____ day of _____, 2007, the Court having considered Defendants' Motion to Amend Their Combined Answering Brief in Opposition to Plaintiffs' Motions (D.I. 58) (the "Answering Brief"), and having concluded that there are good grounds for the requested relief; now therefore,

IT IS HEREBY ORDERED that Defendants' motion is granted, and that Defendants' Answering Brief is amended to add a footnote with the following text at page 9, line 6, immediately after the parenthetical:

Similarly, the Notice of Electronic Filing generated after Cordis filed its New Jersey action on the '473 patent on June 12, 2007 at 12:03 a.m. and the email noting the clerk's office's initial docket entry for that case both incorrectly refer to June 11, 2007. (*See id.* Exs. F & G, respectively.) However, the New Jersey court's clerk's office has confirmed that its records reflect that Cordis' complaint was filed at 12:03 a.m. on June 12, 2007. (*See D.I. 59 Ex. 1 Raffield Suppl. Decl. ¶ 4 & Ex. A.*)

CERTIFICATION PURSUANT TO LOCAL RULE 7.1.1

I hereby certify that prior to the filing of the attached motion, defendants' counsel discussed the requested relief with plaintiffs' counsel, but that no agreement could be reached.

/s/ Steven J. Balick

Steven J. Balick